

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, September 24, 2003, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Robert Bartholomew
Paul Schultz
Mary Voelker
Walter Tarmann
Darryl Judson (Alternate)*

*Mr. Judson was in attendance from 6:30 p.m. to approximately 8:30 p.m. He was present for the Closed Session with Atty. Price, for the hearings regarding BA03:085 Richard P. Reith, BA03:075 James and Gail Mathes, BA03:066 Sprint PCS, and BA03:078 James Julin (continued from September 10, 2003), and for the decision regarding BA03:078 James Julin. The only decision he participated in was the decision regarding BA03:078 James Julin. He voted in place of Mr. Schultz in that case because Mr. Schultz was not present for the hearing on September 10, 2003.

BOARD MEMBERS ABSENT:

SECRETARY TO THE BOARD: Mary E. Finet

OTHERS PRESENT: Atty. Deborah Price, Principal Assistant Corporation Counsel
James Mathes, BA03:075, petitioner
Atty. Dean B. Richards, BA03:075, representing the petitioner
Atty. Michael Long, BA03:066, representing the petitioner
Atty. Steven Schmitz, Principal Assistant Corporation Counsel
Keith Markano, Airport Manager, BA03:066
James Julin, BA03:078, petitioner
Jerome Wegner, BA03:083, petitioner
Daniel J. Lauer, BA03:083, neighbor
Harlan & Linda Uttech, BA03:984, petitioners
Richard and Melissa Reith, BA03:085, petitioners
Bruce Ambuel, BA03:073, petitioner

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

CLOSED SESSION

Ms. Voelker *I move we convene in closed session pursuant to Section 19.85 (1), (g), Wisconsin Statutes, to confer with Attorney Deborah Price of the Corporation Counsel's office to discuss pending litigation, State of Wisconsin vs. Waukesha County Board of Adjustment, Circuit Court*

Case #03-CV-648, regarding BA02:138, Alvin Brook, Town of Mukwonago.

The motion was seconded by Mr. Bartholomew. A roll call vote was taken and the motion carried unanimously.

OPEN SESSION

Mr. Bartholomew *I make a motion to re-convene in open session.*

The motion was seconded by Ms. Voelker. A roll call vote was taken and the motion carried unanimously.

SUMMARIES OF PREVIOUS MEETINGS:

Ms. Voelker *I make a motion to approve the Summary of the Meeting of August 27, 2003.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

NEW BUSINESS:

BA03: 075 JAMES & GAIL MATHES

Mr. Schultz *I make a motion to deny the appeal of a decision of the Planning and Zoning Division staff to deny a zoning permit for a new single-family residence and detached garage because the house plans were not in conformance with a condition of previous variances (BA02:013) that limited the total floor area on the property. I also move to affirm the Planning and Zoning Division staff's contention that a portion of the lowest level of the proposed residence, which would be located 1 ft. 4 in. below grade, is not a "basement" and must be included as floor area.*

The reasons are as stated in the Staff Report and in the letter from Corporation Counsel, dated August 8, 2003, as to what they consider to be a basement. In addition, the current plans differ from the plans that were submitted for the previous hearing, which showed that the proposed residence was slab on grade and had no recessed area for the floor or a crawl space.

The motion was seconded by Ms. Voelker and carried unanimously.

The reasons for the denial of the zoning permit and for the staff's contention that a portion of the lowest level of the proposed residence, which would be located 1 ft. 4 in. below grade, is not a "basement" and must be included as floor area, as stated in the Staff Report, are as follows:

The plans for the proposed residence, which were submitted to the Planning and Zoning Division staff on July 30, 2003, are attached as Exhibits "D-1" through "D-6". Those plans indicate that the proposed residence and detached garage would have a total floor area of 2,540 sq. ft. (927 sq. ft. first floor, 27 sq. ft. covered stoop, 1,134 sq. ft. second floor, and 452 sq. ft. detached garage). This would be in conformance with the previous Board of Adjustment approval permitting a total floor area of 2,546.5 sq. ft., only if a 1,040 sq. ft. area that is labeled as "exposed basement area" on the plans (see Exhibits "D-4" and "D-5") is not included in the total floor area. This "exposed basement area", which would be located on the lake side of the residence, would be only 1 ft. 4 in. below grade. *Note: A residence with a conventional basement cannot be constructed on this lot because it would not be possible to locate the floor of the basement above the highest anticipated seasonal high ground water level, as required.*

After reviewing the house plans submitted on July 30, 2003, the Planning and Zoning Division staff concluded that although the 1,040 sq. ft. area labeled as "exposed basement area" on the plans is partly below ground level, it is not a "basement" and must be included in the total floor area calculations. Since this would result in a total floor area of 3,580 sq. ft., which exceeds the maximum permitted total floor area of 2,546.5 sq. ft. that was previously approved by the Board of Adjustment, the pending zoning permit for the new residence and detached garage was denied on August 7, 2003.

In reviewing the house plans, the Planning and Zoning Division staff considered that the 1,040 sq. ft. area labeled as "exposed basement area" is only one step below the 927 sq. ft. area shown on the plans as the first floor and that when the residence is viewed from the outside, that change in level is not readily apparent, as shown on Exhibits "D-1", "D-2" and "D-3". Further, the Planning and Zoning Division staff does not believe that when the Board of Adjustment granted a special exception from the accessory building floor area ratio requirement and variances from the road setback, offset, floor area ratio, and open space requirements to permit the construction of a new residence and detached garage, they envisioned that they were permitting the type of residence now proposed by the petitioners. If the 1,040 sq. ft. area labeled as "exposed basement" is included as floor area, the current proposal would result in a 3,128 sq. ft. residence, whereas the original house plans considered at the first public hearing (which were rejected by the Board of Adjustment), would have resulted in only a 3,120 sq. ft. residence.

Based on the above analysis, the Planning and Zoning Division staff continues to believe that the 1,040 sq. ft. area labeled as "exposed basement area" on the plans, which is proposed to be located 1 ft. 4 in. below grade, should not be considered to be a "basement" and that it should be included in the total floor area calculations.

BA03:066 SPRINT PCS (held in abeyance from July 23, 2003, and August 27, 2003)

Ms. Voelker

I make a motion to adopt the staff's recommendation for denial, for the reasons stated in the Staff Report and for the reasons stated in the

letter of August 13, 2003, from Keith Markano, Airport Manager (Exhibit “D” of the Staff Report).

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff’s recommendation was for denial. The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested height variance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where, in the absence of a variance, no reasonable use can be made of the property. Self-created hardships or financial hardships are not justification for the granting of a variance. In addition, the Waukesha County Airport Commission has reviewed this request and recommended denial, apparently because they believe the existing cellular tower would be a hazard to navigation. It has not been demonstrated that the cellular communication tower is not a hazard to the safe, normal operation of aircraft. Therefore, it has not been demonstrated that it would be in the public interest to grant the requested variance from the Waukesha County Airport Height Limitation Zoning Ordinance, and that a literal enforcement of the Ordinance would result in an unnecessary hardship.

BA03:078 JAMES JULIN (held in abeyance from September 10, 2003)

Ms. Voelker

I make a motion to approve the request to establish or install below frost line footings and supporting walls for the west portion of the residence to allow the entire residence, the east and the west portions, to be level on the land. This is not contrary to the public interest, as it appears to be similar to the houses in the surrounding neighborhood. Also, the residence was located on that parcel of land pre-county zoning ordinance activation. The petitioner should be allowed to maintain his residence as it is, provided there is no concrete basement flooring poured under the sewer lateral connection and that the sewer lateral connection for maintenance purposes continues to be accessible through the interior of the house, as stated by the petitioner at the public hearing.

The motion was seconded by Mr. Judson and carried unanimously. Note: Mr. Judson voted on this motion in place of Mr. Schultz, who did not vote on this decision because he was not present for the hearing on September 10, 2003.

The staff’s recommendation was for denial. The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where, in the absence of a variance, no reasonable use can be made of the property. It is the intent of the Ordinance that non-conforming structures should be

eliminated over time and allowing a significantly non-conforming residence to be raised, improved, and further maintained in its same non-conforming location would only serve to perpetuate the existence of the non-conforming principal building. There is a sizeable conforming location for re-locating the existing residence or constructing a new residence, which would conform to all Ordinance requirements. Therefore, it would not be within the purpose and intent of the Ordinance to grant the requested variances.

BA03:083 JEROME WEGNER

Mr. Tarmann

I move to approve this request in accordance with the conditions and the reasons set forth by the Planning and Zoning Division staff in the Staff Report.

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The proposed garage must be located at least 20 ft. from the 100-year floodplain, as measured to the outer edges of the walls, with overhangs not to exceed two (2) ft. in width.
2. If additional land is not purchased, the proposed garage must be located at least 18 ft. from the west lot line, as measured to the outer edge of the wall.
3. If additional land is not purchased, the proposed garage may not contain more than 676 sq. ft.
4. The proposed garage must be located at least 10 ft. from the residence.
5. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the proposed garage, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
6. The garage must conform with the height requirement of the Ordinance, i.e. the height of the garage, as measured half way between the peak of the roof and the eaves, must not exceed 15 ft.
7. Prior to the issuance of a zoning permit, a complete set of plans for the proposed garage must be submitted to the Planning and Zoning Division staff for review and approval.
8. If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. **No fill will be permitted within the 100-year floodplain.** The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will permit the construction of a detached garage that will provide needed storage for vehicles and equipment and which is not contrary to the public interest. A conforming location for a detached garage does not exist on the existing parcel and even if the lot area is expanded by the purchase of additional land, that additional land is heavily wooded and not an appropriate location for a detached garage. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA03:084 HARLAN & LINDA UTTECH

Ms. Voelker

I make a motion to approve this request, in accordance with the staff's recommendation, with the conditions stated in the Staff Report and for the reasons stated in the Staff Report.

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. Prior to the issuance of a zoning permit, the Environmental Health Division must certify that the garage location meets the required isolation distance from the septic system or a variance from the required isolation distance must be granted by the State of Wisconsin Department of Commerce.
2. The garage must be located at least 5 ft. from the east lot line, as measured to the outer edge of the wall, with the overhang on the east side not to exceed 1 ft. in width.
3. The garage may be no larger than 528 sq. ft. It must contain only one story and it must conform with the height requirement of the Ordinance, i.e. the height of the garage, as measured half way between the peak of the roof and the eaves, must not exceed 15 ft.
4. Prior to the issuance of a zoning permit, complete plans for the proposed garage, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
5. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the proposed garage, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
6. If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. This is to ensure the construction of the garage does not result in adverse drainage onto adjacent properties and that the property is graded according to the approved plan. The following information must also be submitted along with the grading and

drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. The grading and drainage plan may be combined with the plat of survey required in Condition #5.

7. The wooden storage shed and the “poly-structure” must be removed from the property no later than six (6) months after the issuance of a zoning permit for a detached garage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

A hardship exists due to the lot size and the location of the septic system. A garage is necessary for the reasonable use of the property and even if the Department of Commerce grants a variance from the required isolation distance from the septic system, a garage could not be located on this lot in conformance with minimum offset requirement of 13.83 ft. Although conformance with the recommended 5 ft. offset would permit the construction of only a one-car garage, unless the Department of Commerce grants a variance from the required isolation distance from the septic system, it is felt that a garage closer than 5 ft. to the side lot line could not be maintained without trespassing onto the adjacent property and would not be in conformance with the purpose and intent of the Ordinance. The approval of this request, with the recommended conditions, will result in the removal of two non-conforming structures and allow the construction of a detached garage that will provide badly needed storage for vehicles and equipment and which is not contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA03:085 RICHARD P. REITH

Ms. Voelker

I make a motion to deny this request, in accordance with the staff's recommendation, for the reasons stated in the Staff Report.

The motion was seconded by Mr. Tarmann and carried with four yes votes. Mr. Ward voted no.

The staff's recommendation was for denial. The reasons for the recommendation, as stated in the Staff Report, are as follows:

The interior of the residence could be remodeled, provided the cost is less than 50% of the fair market value of the structure, or the previously granted variances (BA 03:024) could be utilized to replace the residence with a new residence and attached garage. Either option would provide a reasonable use of the property. Therefore, it has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where, in the absence of a variance, no reasonable use can be made of the property.

The second requirement for a variance are unique physical conditions, which are not self-created and which prevent compliance with the Ordinance requirements. The physical limitations of the property, not the personal circumstances or desires of the property owner, are the basis for this test. Although the size of the property makes it impossible to construct a new residence in

conformance with the floor area ratio and open space requirements, variances from those requirements have already been granted and there are no physical limitations that would prevent the construction of a new residence in conformance with all locational requirements of the Ordinance.

The third requirement for a variance is that the variance must not adversely affect the general public interest or be detrimental to nearby properties or the natural resources in the area. The purpose and intent of the Ordinance is to "...prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses; and preserve shore cover and natural beauty." Although the proposed remodeling will not increase the footprint of the residence and does not require variances from the open space requirement or to remodel a non-conforming structure in excess of 50% of its fair market value, it will prolong the life of an extremely non-conforming structure, located only 22 ft. from the lake, that is detrimental to the water quality of the lake and does not contribute to a natural scenic shoreline. Therefore, it would not be in conformance with the purpose and intent of the Ordinance to grant the requested variances. Similarly, although they are special exceptions, rather than variances, and do not require the demonstration of an unnecessary hardship, it would not be within the purpose and intent of the Ordinance to grant the requested special exceptions from the shore and floodplain setback requirements to permit the proposed extension to the existing first floor deck and the proposed new deck on the second floor.

OTHER ITEMS REQUIRING BOARD ACTION:

BA03:073 BRUCE AMBUEL

The Board reconsidered Condition #3 of their August 27, 2003, approval of a variance to permit an existing non-conforming boathouse to be repaired and remodeled in excess of 50% of its fair market value, but decided not to amend their previous decision.

ADJOURNMENT:

Mr. Bartholomew *I make a motion to adjourn this meeting at 10:15 p.m.*

The motion was seconded by Mr. Schultz and carried unanimously.

Respectfully submitted,

Mary E. Finet
Secretary, Board of Adjustment

Attachments: Exhibits "A", "B", and "C"